

(d) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(e) Diverted by the operator of a pool plant or a cooperative association described in §1000.9(c), excluding a cooperative reserve supply unit described in §1124.11, to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least 3 days' production of such dairy farmer's production is physically received at a pool plant during the month.

(2) Of the quantity of producer milk received during the month (including diversions, but excluding the quantity of producer milk received from a handler described in §1000.9(c)) the handler diverts to nonpool plants not more than 80 percent.

(3) Two or more handlers described in §1000.9(c) may have their allowable diversions computed on the basis of their combined deliveries of producer milk which they caused to be delivered to pool plants or diverted during the month if each has filed a request in writing with the market administrator before the first day of the month the agreement is to be effective. The request shall specify the basis for assigning overdiverted milk to the producer deliveries of each according to a method approved by the market administrator.

(4) Diverted milk shall be priced at the location of the plant to which diverted;

(5) Any milk diverted in excess of the limits prescribed in paragraph (e)(2) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to §1124.12(b)(5).

(6) The delivery day requirement in paragraph (e)(1) of this section and the diversion percentage in paragraph

(e)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure the orderly marketing and efficient handling of milk in the marketing area. Before making such finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired to be effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise the delivery day requirement or the diversion percentage must be issued in writing at least one day before the effective date.

(f) Producer milk shall not include milk of a producer that is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program imposed under the authority of a State government maintaining marketwide pooling of returns.

[64 FR 47998, Sept. 1, 1999, as amended at 67 FR 69669, Nov. 19, 2002; 69 FR 1655, Jan. 12, 2004]

§ 1124.14 Other source milk.

See § 1000.14.

§ 1124.15 Fluid milk product.

See § 1000.15.

§ 1124.16 Fluid cream product.

See § 1000.16.

§ 1124.17 [Reserved]

§ 1124.18 Cooperative association.

See § 1000.18.

§ 1124.19 Commercial food processing establishment.

See § 1000.19.